

## General instructions

### Who must file

A partnership must file Form 58, North Dakota Partnership Return Of Income, if it is required to file a federal partnership return (Form 1065 or Form 1065-B) and it carries on business, or derives income from sources, in North Dakota.

**Limited liability company (LLC).** If an LLC is treated like a partnership for federal income tax purposes, it is a partnership for North Dakota income tax purposes.

**Financial institution.** If a partnership meets the definition of a financial institution under N.D.C.C. ch. 57-35.3, it must file North Dakota Form 35, Financial Institution Tax Return. In this case, Form 58 must not be used.

**Signature.** Form 58 must be signed by a general partner (or LLC member, if applicable) or an authorized representative.

**Nonfiler penalty.** If a partnership fails to file after notice to file is given by the Tax Commissioner, a minimum penalty of \$500 may be assessed.

### When and where to file

Form 58 must be filed on or before the 15th day of the 4th month following the close of the taxable year. Mail the return to: Office of State Tax Commissioner, State Capitol, 600 E. Blvd. Ave., Bismarck, ND 58505-0599.

### Information at the source returns

Every partnership doing business in North Dakota which is required to file Federal Form 1099 or W-2 must also file one with the Office of State Tax Commissioner. For more information, obtain the *Income Tax Guideline: Information At The Source Return Requirements And Procedures*.

### Tax incentives for investment in certain businesses

If a partnership invests in a North Dakota venture capital corporation under N.D.C.C. ch. 10-30.1, the North Dakota Small Business Investment Company under N.D.C.C. ch. 10-30.2, a North Dakota certified nonprofit development corporation under N.D.C.C. § 10-33-124, or a qualified business under N.D.C.C. ch. 57-38.5 (seed capital investment credit), the partners may be entitled to an income tax credit. A deduction

may also be allowed for an investment made under N.D.C.C. ch. 10-30.1. Contact the Office of State Tax Commissioner for more information.

### Apportionment and allocation of income or loss by partnership

A partnership that carries on its business entirely within North Dakota must report all of its income or loss to North Dakota.

A partnership that carries on its business both inside and outside North Dakota must apportion and allocate its income or loss to North Dakota in a manner similar to a multistate corporation under the provisions of N.D.C.C. ch. 57-38.1 (Uniform Division of Income Tax Act).

**Exception to apportionment/allocation calculations.** If all of its partners are resident individuals, estates and trusts, a multistate partnership does not have to apply the apportionment and allocation provisions in completing Form 58. This is because individual, estate and trust partners must report to North Dakota their entire distributive share of the partnership's federal income or loss, regardless of where the partnership carries on its business.

### Reporting of income or loss by partners

A partnership is not subject to North Dakota income tax. Its income or loss is passed through to its partners. The amount of income or loss to report and the forms and procedures that apply depend on the type of partner, as explained below.

**Resident individual, estate or trust.** A resident individual, estate or trust must report to North Dakota its entire distributive share of the partnership's income, gains, and losses, as determined for federal income tax purposes. This applies even though the partnership is required to apportion and allocate its income or loss to North Dakota. The partnership is not required to provide any statement or other information to a resident individual, estate or trust partner.

**Nonresident individual, estate or trust.** A nonresident individual, estate or trust must report to North Dakota only its distributive share of the partnership's North Dakota income or loss, as determined and reported on

Form 58. The partnership must provide its nonresident individual, estate and trust partners with a statement informing them about the requirement to file a North Dakota income tax return and showing the partner's distributive share of North Dakota income or loss. A nonresident individual must file either Form 37-S or Form 37, and a nonresident estate or trust must file Form 38.

**Corporation, partnership or limited liability company (LLC).** A corporation, partnership or LLC must file a North Dakota income tax return if it derives income from a partnership which does business, or derives income from sources, in North Dakota. The partnership must provide its corporation, partnership and LLC partners with a statement informing them about the requirement to file a North Dakota income tax return. Special rules apply for determining the amount of income or loss taxable by North Dakota in the case of a corporation, partnership or LLC partner. A regular corporation must file Form 40 and an S corporation must file Form 60. A partnership must file Form 58. The type of return, if any, that must be filed by an LLC depends on its entity classification for federal income tax purposes.

### Composite return

A composite filing method is allowed as an alternative method of filing for nonresident individual partners. Under this method, one individual income tax return, referred to as a "composite return," may be filed by the partnership on behalf of two or more eligible partners. For details, obtain the *Income Tax Guideline: Composite Filing Method*.

### Assistance

For forms or assistance, call (701)328-3450 or (toll free within North Dakota) 1-800-638-2901. Speech or hearing impaired persons may call us through Relay North Dakota at 1-800-366-6888 (ask for 1-800-638-2901).

Persons having Internet access may obtain forms, submit questions or comments, and find other information at:

**[www.state.nd.us/taxdpt](http://www.state.nd.us/taxdpt)**

Or write to:  
Office of State Tax Commissioner  
State Capitol  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0599

## Specific instructions

### Page 1, Form 58

#### Line 4

Enter the following on this line:

- Interest from state and local obligations other than North Dakota and its political subdivisions.
- ACRS depreciation deducted on the federal partnership return for assets placed in service from January 1, 1981, through the end of the 1982 taxable year. Do not include ACRS depreciation on assets under a safe harbor lease that is not recognized by North Dakota— see **Safe harbor leases** below. (See the instructions to line 6b for a corresponding depreciation subtract adjustment.)
- **Safe harbor leases.** Section 168(f)(8) of the Internal Revenue Code (covering safe harbor leases) was not adopted by North Dakota where the minimum investment by the lessor is less than 100%. If the partnership is the buyer/lessor under this type of safe harbor lease, enter on this line interest expense, amortization expense, acquisition costs, losses, and depreciation included in the partnership's federal income or loss. If the partnership is the seller/lessee, enter on this line sale proceeds, rent expense, amortization expense, and acquisition costs included in the partnership's federal income or loss.

#### Line 6a

Enter interest from U.S. obligations and other securities exempt from state income tax under federal law, including the portion of dividends received from a regulated investment company (mutual fund) attributable to the mutual fund's investment in the same kinds of securities. Unless already identified on the federal partnership return, attach a schedule specifically identifying the source and amount of interest and dividends.

#### Line 6b

Enter the following on this line:

- Depreciation that would have been allowed for the current year on ACRS recovery property placed in service from January 1, 1981, through the end of the 1982 taxable year using methods

allowed under the Internal Revenue Code as amended through December 31, 1980. Do not include depreciation on assets under a safe harbor lease that is not recognized by North Dakota— see **Safe harbor leases** below. (See the instructions to line 4 for a corresponding depreciation addback adjustment.)

- **Safe harbor leases.** Section 168(f)(8) of the Internal Revenue Code (covering safe harbor leases) was not adopted by North Dakota where the minimum investment by the lessor is less than 100%. If the partnership is the buyer/lessor under this type of safe harbor lease, enter on this line the rental income included in the partnership's federal income or loss. If the partnership is the seller/lessee, enter on this line interest income included, and depreciation *not included*, in the partnership's federal income or loss. For this purpose, ACRS recovery property placed in service from January 1, 1981, through the end of the 1982 tax year must be depreciated using methods allowed under the Internal Revenue Code as amended through December 31, 1980.

**Income tax exemption.** If the partnership was granted an income tax exemption under N.D.C.C. ch. 40-57.1, do not enter the exempt portion of the partnership's income on this line. In general, the partners may claim the exclusion on their income tax returns.

#### Lines 8 through 12

In general, all partnerships which carry on business both inside and outside North Dakota must complete these lines. However, if a partnership has only resident individual, estate and trust partners, or carries on its business entirely within North Dakota, skip these lines and enter the amount from line 7 on line 13.

#### Line 8

If applicable, enter nonbusiness income or losses, net of related expenses, that are allocable under N.D.C.C. ch. 57-38.1. Include all allocable items whether they are allocable to North Dakota or outside North Dakota. Expenses must be attributed to allocable income based on a method which fairly distributes all expenses to the

partnership's various kinds of income.

**Attach a schedule identifying each item of allocable income or loss, the related expenses, and an explanation of the basis for allocating each item.**

#### Line 12

Enter on this line nonbusiness income or losses, net of related expenses, included on line 8 that are allocable to North Dakota under N.D.C.C. ch. 57-38.1. **Attach a schedule identifying each item of North Dakota allocable income or loss, the related expenses, and an explanation of the basis for allocating each item.**

### Schedule A

#### (Page 2, Form 58)

All partnerships must complete Schedule A to identify their partners and show the partners' distributive shares of North Dakota income or loss. If additional lines are needed, attach additional schedules as needed.

Except for nonresident individual, estate or trust partners, the amount of income or loss required to be reported to North Dakota by a partner may differ from the distributive share of North Dakota income or loss reported on Schedule A. Resident individual, estate and trust partners are subject to North Dakota income tax on their entire distributive share of income, gains and losses, as determined for federal income tax purposes. For corporation, partnership and limited liability company partners, special rules apply for determining the amount of income or loss taxable by North Dakota. Contact the Office of State Tax Commissioner for more information.

### Schedule B

#### (Page 2, Form 58)

In general, all partnerships which carry on business both inside and outside North Dakota must complete Schedule B. The rules for determining the property, payroll and sales factors are contained in N.D.C.C. ch. 57-38.1 and N.D. Admin. Code ch. 81-03-09. However, if a partnership has only resident individual, estate and trust partners, Schedule B does not have to be completed. (See instructions to lines 8 through 12 on page 1 of Form 58.)